

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

John Anthony Markert,

Defendant.

**MEMORANDUM OPINION
AND ORDER**

Crim. No. 11-200 (1) ADM/FLN

William J. Otteson, Esq., and David M. Genrich, Esq., United States Attorney's Office, Minneapolis, MN, on behalf of Plaintiff United States of America.

Joseph S. Friedberg, Esq., Joseph S. Friedberg, Chartered, Minneapolis, MN, on behalf of Defendant John Anthony Markert.

This matter is before the undersigned United States District Judge for a ruling on Defendant John Anthony Markert's ("Markert") Motion for Release Pending Resentencing [Docket No. 345]. For the reasons set forth below, the Motion is denied.

In April 2012, a jury found Markert guilty of five counts of misapplication of bank funds. See Jury Verdict [Docket No. 237]. On September 21, 2012, this Court sentenced him to forty-two months imprisonment, followed by two years of supervised release. See Sentencing J. [Docket No. 301]. On October 22, 2013, the Eighth Circuit Court of Appeals affirmed Markert's conviction but remanded his case for resentencing. See United States v. Markert, No. 12-3332, 2013 WL 5716353, --- F.3d ---- (8th Cir. 2013).

Shortly thereafter, Markert filed the present motion, requesting his release from custody pending resentencing. Markert argues he has already served 12 months in custody, and he will likely be resentenced to time served. The Government responds that it intends to prove the

actual loss caused by Markert makes a reduction in sentence unwarranted, and thus Markert's release pending resentencing should be denied.

The length of Markert's recalculated sentence, in light of the Eighth Circuit's decision, is in dispute, and it is not clear that a reduction of Markert's sentence from 42 months to 12 months is appropriate, considering his conviction was affirmed on all counts. As a result, the Court will not order Markert released pending sentencing, but it will endeavor to hold a hearing regarding sentencing, and resentence, as promptly as possible. To that end, should the parties wish to more fully brief their positions regarding resentencing, they may do so by November 22, 2013. Thereafter, the Court shall hold a resentencing hearing as early as the parties can agree to be available.¹

Based upon the foregoing, and all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant John Anthony Markert's Motion for Release Pending Resentencing [Docket No. 345] is **DENIED**.

BY THE COURT:

s/Ann D. Montgomery

ANN D. MONTGOMERY
U.S. DISTRICT JUDGE

Dated: November 1, 2013

¹ Counsel are directed to contact Ms. Gertie Simon, the Court's Calendar Clerk, with their agreed briefing schedule and to set a sentencing date.